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Book Reviews

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BOOK REVIEWS

AMERICAN FAMILY LAWS. VOLUME II. DIVORCE AND SEPARATION. Chester G. Vernier. Stanford University Press, Stanford University, California, 1932.

The first volume of the series of volumes prepared by Professor Vernier of the Stanford Law School dealing with American Family Laws was briefly reviewed in 20 Kentucky Law Journal 367. The present volume embraces the material collected upon the subject of Divorce and Separation.

The first chapter deals with the various grounds for divorce, defenses to the divorce action, jurisdiction of the courts, and the venue, the effect of divorce, alimony, et cetera. The second chapter deals with judicial separation. The last chapter concerns itself with separation, separation agreements, the care of children, desertion, etc.

One regrets that the man who has brought all this valuable material together, comprising as it does the comparative provisions on the various topics and the case law, has not given us his own interpretation of the results which his materials must lead to. The present reviewer has already had occasion to make use of the comparative statutory provisions in certain instances and has found the volume immensely useful and the only work of its kind available.

ALVIN E. EVANS.

HANDBOOK OF THE LAW OF SURETYSHIP AND GUARANTY. By Herschal W. Arant. Hornbook Series, St. Paul. West Publishing Co., 1931, pp. xii, 471.

A valuable addition to the well known Hornbook series of law texts is Dean Arant's handbook on the law of suretyship. It is very attractively bound in red fabrikoid, well printed on a good quality of paper, with the usual convenient black letter sections headings distinctive of the Hornbook series.

The law of suretyship in recent years has been undergoing a change from the earlier accommodation suretyship to that of the present day compensatory suretyship. Most of the principles of the law of suretyship were developed at a time when suretyship was largely a matter of one merchant or neighbor helping another in securing credit. Today most of the cases of promising to be answerable for the debt or default of another arise where guaranty or bonding companies have undertaken to insure the faithful discharge of some duty, for which assurance they charge a sufficient amount to make them whole and in most cases give them a handsome profit. Where formerly courts were inclined to favor the surety and not hold him

unless all technicalities were complied with, the tendency today is to make the compensated surety give the service for which he has received his pay. It is in the application of these old rules to new situations that the author has expressed himself as dissatisfied "with a good deal of the rather well settled law in this field" of suretyship. He has approached his subject in a critical attitude and in stating the law as it is, he has not hesitated to tell what he thinks it ought to be. An illustration of this attitude is to be found in his treatment of premature payment to the principal.

In his introductory chapter the author has very carefully drawn the distinction between suretyship in its narrower sense and the broader use of the term by courts and text book writers. He has also carefully distinguished suretyship from guaranty, warranty, indorsement and indemnity. He does not recognize the terms sometimes used by student, formal and informal suretyship, however. This introductory chapter is especially valuable to law students.

In regard to married women's capacity to act as sureties, the writer missed an opportunity to add to the value of his work by citing and quoting from the statutes in the various states. He has merely cited a few cases on the point. Consequently he covers only a few jurisdictions.

An appendix of some twenty-five or twenty-six pages contains forms useful to both student and practitioner.

This text is timely, well-written and of real worth. It covers a field of the law that is growing in importance.

W. LEWIS ROBERTS.

SALES TAXES. GENERAL, SELECTIVE, AND RETAIL. By the National Industrial Conference Board. (New York: National Industrial Conference Board. Pp. ix, 79.)

The National Industrial Conference Board has evidenced its interest in sales taxation by giving considerable attention to the problem in several of its state surveys and by two earlier volumes devoted very largely to the subject. The first was *General Sales or Turnover Taxation*, published in 1929, and the second the New York survey published only recently. On the whole there is little in the present volume that is not to be found in the earlier reports. In fact, the purpose is to present the general principles of economics, administration and law underlying the sales tax idea. The task is performed in a routine fashion, and the book is to be recommended only for the uninitiated who desire a general introduction to the subject. Even those desiring such an introduction will find here a dearth of factual data.

JAMES W. MARTIN.

Bureau of Business Research
University of Kentucky.

STRIKE INJUNCTIONS IN THE NEW SOUTH. By Duane McCracken, University of North Carolina Press, 1931, pp. xiv, 290.

The use of injunctions in labor disputes has been discussed for years, but few factual studies have been made. Professor McCracken presents a factual study of the actual workings of the injunction process in a limited field, dealing primarily with five cases arising in southern states. It should be obvious that a purely legal study of the injunction gives a very inadequate picture of the process, and yet most of the writers, until recently have stressed only the legal aspects. The fundamental problems in the non-legal or factual approach are: (1) What activities have the courts restrained? (2) Have injunctions been obeyed, and if not, what have been the consequences of disobedience? (3) What moneys and efforts have been expended in opposing injunctions? (4) What have been the ultimate effects of injunctions upon picketing, boycotting, striking, unionization, wage levels and working conditions? (5) And finally how does the injunction differ from other legal instruments used in the settling of labor disputes? We need further studies of this sort, if for no other reason than to expose the fallacies in deductive reasoning that have been so prevalent in the field of labor law.

FORREST REVERE BLACK,
Professor of Law.

SOME PHASES OF FAIR VALUE AND INTERSTATE RATES. By James Barclay Smith, Louisiana State University Press, 1931, pp. 101.

This short monograph deals primarily with two problems; the proper base for rate making and the question of reasonable return. The author gives a brief discussion of the following rate bases; exchange value, reproduction new, reproduction of the service, original cost, and historical cost (prudent investment). The leading cases are outlined showing the development of rate making theory by the Supreme Court and there is a short discussion of the effect of Section 15 of the Transportation Act of 1920. As a brief manual, the monograph has value to the layman who wants merely a statement of the high-lights in this important field.

FORREST REVERE BLACK,
Professor of Law.

GOVERNMENT BY JUDICIARY. Louis Boudin, William Godwin, Inc., 1932, 2 Vols pp. xiii, 583, 579.

In this two volume work, Mr. Boudin has covered about the same territory as Charles Warren in his "Supreme Court in United States History," but Mr. Boudin's emphasis is always on the doctrine of judicial review. Here one will find the best critique of the case of *Marbury v. Madison* that has appeared to date. The doctrine of judicial review has become a national political issue in at least two presidential campaigns and the intelligent layman as well as the practicing lawyer will find much food for thought in this very readable book. After

criticising the arguments advanced to support the doctrine that the Supreme Court has the right to declare an act of Congress unconstitutional, the author then proceeds to show that judicial review has undergone such radical changes in the course of our history that it would probably not be recognized either by its original advocates or by the great Chief Justice who is supposed to have been its actual founder. In the two concluding chapters especially, entitled "The American House of Lords" and "Government by a Few Conservative Men," the author evaluates the practical working of judicial review and concludes that we have a government of men and not of law—in short a judicial oligarchy.

The reviewer agrees with the author as to the inadequacy of the arguments used in *Marbury v. Madison* to inaugurate the doctrine of judicial review but parts company with him in evaluating, on the whole, the results of more than a century of judicial review. The orthodox fundamentalist, who takes judicial review for granted always assumes, whether he is aware of it or not, that he is dealing with a bad legislature and a good court. In stressing some of the questionable exercises of judicial review the author performs a valuable service for the more intelligent members of the fundamentalist school. As a result of a careful perusal of this work, some of them may realize that at times the dramatis personae are cast so that the court plays the villain's role and the legislature is the frustrated hero. In making his case, Mr. Boudin can be accused of exaggerating the evil of "government by judiciary," but in that very exaggeration lies the importance of the work. It constitutes a challenge to the hoary myth concerning the "Holy of Holies"—the Supreme Court of the United States. We can recommend this work highly to all thoughtful citizens who are interested in the role played by our courts in the process of government.

FORREST REVERE BLACK,
Professor of Law.

THE PREPARATION OF WILLS AND TRUSTS. Being a Second Edition of the Preparation and Contest of Wills. By Daniel S. Remsen in collaboration with R. H. Burton-Smith and Gerard T. Remsen. New York; Baker, Voorhis & Company, 1930.

This book has now appeared in a new edition. It was deservedly popular and the additions made warrant a new edition. The book is what it purports to be and is not a treatise on Wills. It should be of great value to younger lawyers whose experience in draftsmanship may be somewhat limited. But the seasoned lawyer will find valuable suggestions in this treatise. For example, in the chapter dealing with the description of the subject matter of the gifts such as "estate," "property," "effects," "money," "goods and chattels," "furniture," "farm," etc., the author shows in detail the interpretations that have been given judicially to these items. Among others, the chapters on "The Rule Against Perpetuities," "Conditions," "Preventions of Lapse,"

and "Restraint on Alienation" contain many valuable aids. The chapters on "Detached Clauses" also should be mentioned and the chapters on "Forms for Life Insurance Trusts and for Charitable Trusts Under the Uniform Trust for Public Uses."

ALVIN E. EVANS.